



FH  
[REDACTED]

**STATE OF WISCONSIN  
Division of Hearings and Appeals**

---

In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MOP/168544

---

**PRELIMINARY RECITALS**

Pursuant to a petition filed September 3, 2015, under Wis. Stat., §49.45(5), to review a decision by Brown County Human Services to recover Medical Assistance (MA), a hearing was held on October 23, 2015, by telephone. A hearing set for October 15, 2013 was rescheduled at the petitioner's request.

The issue for determination is whether petitioner was overpaid MA after failing to report increased income.

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

|  
|

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: [REDACTED]  
Brown County Human Services  
111 N. Jefferson St.  
Green Bay, WI 54301

**ADMINISTRATIVE LAW JUDGE:**

Brian C. Schneider  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Brown County.
2. Petitioner filed an application for health insurance on the federal marketplace on January 31, 2014. The marketplace forwarded the application to the county agency when it determined that petitioner would be eligible for MA under BadgerCare Plus (BC+).

3. On February 25, 2014, the county sent petitioner a notice telling him that he was eligible for BC+ as of April 1, 2014. The notice told petitioner that he should notify the county if his monthly income went above \$972.50.
4. Petitioner began working with the [REDACTED] in April, 2014. His income went above \$972.50 that month and stayed above that amount thereafter. Had petitioner reported the job BC+ would have ended June 1, 2014. Although petitioner did not use his BC+ card, the program started paying HMO capitation fees on his behalf in September, 2014, and continued to pay those fees until BC+ ended. BC+ ended June 1, 2015 because petitioner did not complete a review.
5. By a notice dated August 27, 2015 the county informed petitioner that he was overpaid \$1,085.15 in MA from September 1, 2014 through May 31, 2015, claim no. [REDACTED]

### DISCUSSION

MA overpayment recovery is authorized by Wis. Stat., §49.497(1):

(a) The department may recover any payment made incorrectly for benefits provided under this subchapter or s. 49.665 if the incorrect payment results from any of the following:

1. A misstatement or omission of fact by a person supplying information in an application for benefits under this subchapter or s. 49.665.
2. The failure of a Medical Assistance or Badger Care recipient or any other person responsible for giving information on the recipient's behalf to report the receipt of income or assets in an amount that would have affected the recipient's eligibility for benefits.
3. The failure of a Medical Assistance or Badger Care recipient or any other person responsible for giving information on the recipient's behalf to report any change in the recipient's financial or nonfinancial situation or eligibility characteristics that would have affected the recipient's eligibility for benefits or the recipient's cost-sharing requirements.

See also the department's BC+ Handbook, Appendix 28.2. The overpayment must be caused by the client's error. Overpayments caused by agency error are not recoverable.

An overpayment is determined as follows: "If the case was ineligible for BC+, recover the amount of medical claims paid by the state and/or the capitation rate. Use the ForwardHealth interChange data from the Total Benefits Paid by Medicaid Report(s). Deduct any amount paid in premiums (for each month in which an overpayment occurred) from the overpayment amount." Handbook, App. 28.4.2.

Prior to April 1, 2014, the state had an MA program for childless adults called the BC+ Core program with an income limit of 200% of the Federal Poverty Level (FPL). The program was limited to only a small number of potentially eligible participants due to enrollment limits. State law changed effective April 1, 2014. As of that date all childless adults were eligible for BC+ but with the income limit reduced to 100% of the FPL, which, for a one-person household, was \$972.50. See Wis. Stat., §49.471(4)(a)4.b for the new law, and the MA Handbook, Appendix 50.1 for the limit.

Petitioner testified that he was unaware that he even was eligible for BC+, and that he did not receive a BC+ card. The notice informing him of his eligibility was sent to the same address he uses currently. It is very possible that petitioner did not pay attention to the notices that were sent to him because he did not

expect to receive BC+ eligibility, but the problem is that the notice of petitioner's BC+ eligibility was sent two months before he started work at the [REDACTED]. It is more likely that petitioner did not report his job to the economic support agency because he thought that he would not have to use MA.

Although I understand petitioner's distress at receiving the overpayment notice, under the clear, unambiguous law, I must conclude that he was overpaid as alleged. He became eligible for BC+, the eligibility notice told him that he needed to report new income, and he did not report the new income. The MA program thus paid a number of HMO premiums on petitioner's behalf after his eligibility ended. I can find no authority for the Division of Hearings and Appeals to make an exception to the law, and thus I must conclude that the overpayment was determined correctly.

### **CONCLUSIONS OF LAW**

The agency correctly determined an MA overpayment because petitioner failed to report income that put him over the BC+ income limit.

**THEREFORE, it is**

**ORDERED**

That the petition for review is hereby dismissed.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 9th day of November, 2015

---

\sBrian C. Schneider  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

Brian Hayes, Administrator  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAmail@wisconsin.gov](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on November 9, 2015.

Brown County Human Services  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability